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May 5, 1993

MAY - 5 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, D.C. 20554

Re: Request for Advance Ruling on
Confidential Treatment of
Appendix to Dkt. 92-298 Reply Comments

Dear Madam Secretary:

Because of the attending urgency, facsimile copies of the letter signed by Mr. Kahn were filed on May 3.

The original letter is enclosed herewith, and you are requested to substitute it for one of the facsimile copies.

Respectfully submitted,


William Malone

Attorney for
Leonard R. Kahn

WM:bym
Enclosure

original.ltr (0369)

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MAY - 5 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Madam Secretary:

The appendices are relevant and material to the extent that they describe legal obstacles to the Commission's proposal to adopt Motorola's stereo system as a sole AM stereo standard and that they show that Motorola's stereo system's alleged dominance of the AM stereo market was obtained in violation of the antitrust laws. The statutory public interest standard precludes the Commission from acting in defiance of the antitrust laws, and P.L. 102-538 neither excuses past violations of the antitrust laws nor authorizes the Commission to act in furtherance of any on-going violation of the antitrust laws.

The Confidential Appendix to the undersign's April 4th, 1993 submission contains confidential information and discussions of such confidential information which was designated

Accordingly, the appendix and its attachments should be treated by the Commission as confidential. Copies of this material have, of course, been served on Motorola, Inc.

Motorola, in its reply comments filed April 20th stated in pertinent part that:

"B. No FCC Investigation Is Appropriate of Any Ongoing Allegations Which Are Currently, and Properly, Being Pursued Through Judicial Tribunals. These Issues Are Not Appropriate For Deliberation In The Instant Proceeding And Are No Impediment To Selection Of An AM Standard."

In Reply Comments filed by the undersigned, there is a confidential appendix submitted, in which the following statement appears:

"Adoption of the Motorola AM Stereo system would (a) violate the Federal Communications Act 47 USC 313, as amended, and (b) aid and abet further violations by Motorola of the Federal Antitrust Laws, Sherman Act, 15 USC 1, 2."

"The Commission is required by the Communications Act, Section 313, to respect the antitrust laws of this country."

"On the other hand, the Commission is required by an act of Congress (no matter how improperly passed) to select a single system. That act **does not require the Commission to select the Motorola system...**" (Bold print added)

In order to put the Reply Appendix (this request for an advanced ruling concerns only the Reply Appendix) before the Commission

A timely ruling on this request, referable to a Commission decision in Docket No. 92-298, is sought.

Respectfully submitted,



Leonard R. Kahn

LRK/jd

cc: Michael Menius, Esq.
David H. Solomon, Esq.

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